IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 568 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF ELECTRICITY (ELECTRICITY DUTY)

Versus

RAMESHBHAI HARIBHAI PATEL

Appearance:

1. Appeal from Order No. 568 of 1999

MR KC SHAH AGP for Petitioner No. 1

MR PR NANAVATI for Respondents No. 1-2

MR MD PANDYA for Respondent No. 3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 02/11/2001

ORAL JUDGEMENT

The appellant-original defendant No.1-Commissoner of Electricity (Electricity Duty) of Gujarat State has challenged in this appeal the impugned order dated 17.8.1999 passed by the 8th Joint Civil Judge (S.D.)

Vadodara granted application below Ex.5 in Special Civil Suit No.211/99 in terms of para 16(1) of application Ex.5 till final disposal of the suit whereby the recovery stayed. This appeal was straightaway admitted on 9.12.1999 and fixed for hearing immediately on 15.12.1999 but due to some or the other reason this could not be heard till today. Be that as it may.

Learned AGP, Mr.K.C.Shah for the appellant submitted that such recovery cannot be challenged before the civil court and the civil court will have no jurisdiction to entertain suit, therefore, civil court ought not to have granted injunction. He further submitted that whether it is manufacturing process or not that question has to be decided by this court in a writ petition filed by other persons, therefore, prima facie view taken by the learned Trial Judge in favour of the plaintiff cannot be sustained. He also submitted that recovery of public revenue running into lakhs of rupees has been stayed by trial court, which is not permissible under law. In support of his submission Mr.Shah has relied upon the order dated 20.02.2000 passed by my learned Brother D.H.Waghela, J. in Special Civil Application No.373/01 rejecting the prayer for interim relief in view of the judgment of the Hon'ble Supreme Court reported in AIR 1985 SC 330. Mr.Shah also submitted that while allowing application Ex.5 learned Trial Judge has practically decreed the suit. He, therefore, submitted that the interim relief granted by the trial court be vacated and they may be permitted to disconnect the electricity connection or the respondent-original plaintiff be directed to deposit the entire amount due from them by way of electricity duty.

However, learned counsel Shri Nanavati for the respondents-plaintiffs vehemently submitted that the trial court has jurisdiction to entertain suit and when the trial court found prima facie strong case in favour of the plaintiff and that the balance of convenience was also in their favour and the irreparable loss would have been caused to the plaintiffs if the injunction was not granted and in that view of the matter if the trial court has granted injunction then this court should not interfere with such order. He also submitted that admittedly the unit of the respondent-plaintiffs is Small Scale Industry (SSI) unit and the goods manufactured by it is excisable because they are manufacturing the same, therefore, no excise duty can be levied as the unit was exempted from payment of electricity duty from 11.1.1996 to 12.11.2000. He also tried to rely upon the Gas Cylinder Rules, 1981 under which they were granted

license to manufacture oxygen gas, wherein manufacturing gas is defined. He submitted that if this court comes to the conclusion that when there is a question of public revenue then the court in its discretion can pass conditional order of depositing electricity duty at a reasonable rate.

This is a unique case where it would be difficult for this court to go into the merits of the case because except the present respondents-original plaintiffs no one else had approached the civil court by way of suit and other similarly situated persons have approached this court by way of writ petitions under Article 226 of the Constitution of India. Number of interim orders passed by different Hon'ble Judges of this court have been brought to my notice. In some cases blanket stay was granted, in some cases no interim relief was granted and in some cases interim relief granted on certain conditions and the writ petitions are pending for final disposal before this court. Under the circumstances, it would not be proper for this court to express any opinion about the merits of the case. However, when the trial court granted unconditional interim relief in favour of the respondents-plaintiffs then this court has to consider as to whether the blanket interim relief granted in favour of the respondents-plaintiffs be confirmed or modified or set aside.

As stated earlier, different Hon'ble Judges of this court while entertaining writ petitions passed different types of interim orders. In some cases, this court refused interim relief, in some cases, the interim relief was granted on certain conditions and in few cases blanket interim relief is granted.

It is true that in an almost identical case of Sky Oxygen, learned Single Judge of this court refused the interim relief in Special Civil Application No.4415/99. In another writ petition being Special Civil Application No.373/01 filed by Bharat Petroleum Corporation Ltd. another learned Single Judge of this court specifically rejected the prayer for interim relief in view of the judgment of the Hon'ble Supreme Court reported in AIR 1985 SC 330 but the fact which is not in dispute is that in few cases this court granted interim relief, some other judges of this court granted blanket interim relief and in some cases interim relief is granted on certain conditions directing the petitioners to deposit specific amount.

Having regard to the peculiar facts and

circumstances of the case and the fact that in this case the trial court has granted blanket interim relief, which is in operation in favour of appellants-plaintiffs till today in absence of any interim order passed by this court in this appeal, I am of the considered opinion that the impugned order passed by the trial court allowing Ex.5 is required to be modified suitably with certain conditions without expressing any opinion on the legality and validity of the same.

Accordingly, this appeal is partly allowed to the extent that the interim relief granted earlier by the trial court in terms of para 16(1) of the application Ex.5 is confirmed subject to the condition that the respondents-plaintiffs shall deposit 50% of outstanding amount of electricity duty with the appellants within one month from today.

It is made clear that in case the respondents-plaintiffs ultimately succeeds in the suit then the said amount shall be refunded to them with interest on it as ordered by the civil court.

(B.J.Shethna, J.)

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